

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION FOR APPROVAL) CASE NO. 2006-00136
OF THE INDIRECT TRANSFER OF)
CONTROL RELATING TO THE MERGER)
OF AT&T, INC. AND BELLSOUTH)
CORPORATION)

**NUVOX COMMUNICATIONS, INC.'S
RESPONSES TO JOINT APPLICANTS'
SECOND SET OF DATA REQUESTS**

NuVox Communications, Inc. (“NuVox” or “Respondent”), by counsel, hereby submits its Responses to the Second Set of Data Requests propounded by AT&T, Inc., BellSouth Corporation and BellSouth Telecommunications, Inc. (referred to herein collectively as the “Joint Applicants”).

DATA REQUEST NO. 1: Do you dispute the fact that the combined entity, post-merger, will have the financial ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5)? If so, why?

RESPONSE: Respondent's answer to this Data Request has not changed since its submission of responses filed May 11, 2006 to Joint Applicants' Initial Data Requests. Therefore, Respondent hereby adopts its Response to Data Request No. 1 of Joint Applicants' Initial Data Requests.

DATA REQUEST NO. 2: Do you dispute the fact that the combined entity, post-merger, will have the technical ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5)? If so, why?

RESPONSE: Respondent's answer to this Data Request has not changed since its submission of responses filed May 11, 2006 to Joint Applicants' Initial Data Requests. Therefore, Respondent hereby adopts its Response to Data Request No. 3 of Joint Applicants' Initial Data Requests.

DATA REQUEST NO. 3: Do you dispute the fact that the combined entity, post-merger, will have the managerial ability to provide reasonable service in Kentucky pursuant to KRS 278.020(5)? If so, why?

RESPONSE: Respondent's answer to this Data Request has not changed since its submission of responses filed May 11, 2006 to Joint Applicants' Initial Data Requests. Therefore, Respondent hereby adopts its Response to Data Request No. 5 of Joint Applicants' Initial Data Requests.

DATA REQUEST NO. 4: On page 12 of NuVox's Responses to Joint Applicants' Initial Data Requests, NuVox alleges that "[t]he proposed merger between AT&T and BellSouth will . . . make it all that more difficult for the KPSC to open Kentucky's local markets to competition."

- (a) Is the "local market" to which you referred the mass market (i.e. residential) or the enterprise market (i.e., business)?
- (b) If the term "local market" refers to the mass market, do you dispute that AT&T stopped marketing to mass market consumers in Kentucky in 2004?
- (c) If the term "local market" refers to the mass market, state with specificity all facts which support your theory that the merger of BellSouth with an entity that is not competing for mass market customers in Kentucky reduces competition.
- (d) If the term "local market" refers to the business market, state with specificity all facts that support your theory that BellSouth and AT&T are direct competitors in the business market in Kentucky.

RESPONSE:

- (a) The term "local market" referred to both residential and business customers.
- (b) Respondent does not have sufficient information to either confirm or deny this statement.
- (c) Respondent is continuing its analysis of the proposed merger and is not yet

in a position to fully respond. The statement is that the merger will make it more difficult to open local markets to competition. The merger will make the incumbent provider larger, with more resources and a larger geographic footprint than BellSouth currently enjoys. The larger the incumbent, the more difficult is the task of successfully competing against it.

(d) Respondent is continuing its analysis of the proposed merger and is not yet in a position to fully respond. Although additional facts are likely to become available, Respondent notes that BellSouth had named both AT&T and SBC (separately) as competitors to it in the Kentucky TRO proceeding (*See* testimony of Pamela Tipton, Docket No. 2003-00379).

DATA REQUEST NO. 5: On page 14 of NuVox's Responses to Joint Applicants' Initial Data Requests, you state that the combined entity "will enjoy an unprecedented geographic footprint that will uniquely position it to offer multi-location customers discounts and other pricing plans that cannot be matched by any competitor in Kentucky."

- (a) Please confirm that this alleged harm is limited to the business market.
- (b) Does the allegation that "an unprecedented geographic footprint" will create harm to competitors assume that AT&T owns facilities in Kentucky?
- (c) If the allegation based on an alleged "unprecedented geographic footprint" does not assume ownership of facilities by AT&T in Kentucky, state all facts upon which you claim that "an unprecedented geographical footprint" will cause harm.

RESPONSE:

- (a) Confirmed.
- (b) No.
- (c) NuVox is continuing its analysis of the proposed merger and is not yet in a position to fully respond. Multi-location discounts are not limited to an entity's location in an individual state. AT&T will be positioned to offer multi-location discounts across its entire footprint, including states formerly served by PacBell, Ameritech, Southwestern Bell, Southern New England Telephone and those additional "out of region" cities where SBC Telecom and AT&T (pre-merger) had established facilities.

DATA REQUEST NO. 6: On page 14 of NuVox's Responses to Joint Applicants' Initial Data Requests, you state that "keeping the local network open will become even more difficult in the face of the sustained opposition from a post-merger carrier with the vast resources that will be enjoyed by AT&T/BellSouth."

(a) Is it your position that the Commission should deny the merger because the combined entity will have regulatory resources?

(b) Do you agree that the combined entity's legal obligations under Sections 251 and 252 of the Telecommunications Act of 1996 will remain unchanged after the merger of the Joint Applicants?

(c) If your response to Request 6(b) is anything other than an unqualified yes, state with specificity each and every fact or theory that supports your response.

(d) Do you agree that this Commission's authority to act under Section 251 and 252 of the Telecommunications Act of 1996 will remain unchanged after the merger of the Joint Applicants?

(e) If your response to Request 6(d) is anything other than an unqualified yes, state with specificity each and every fact or theory that supports your response.

RESPONSE:

(a) NuVox is continuing its analysis of the proposed merger and is not yet in a position to fully respond. At the very least, however, the Commission should consider

the adoption of conditions designed to mitigate the adverse consequences of the resource imbalance that will exist between the post-merger AT&T and the competitive carriers that remain in the market.

(b) The legal requirements are not changed by the merger. The resources available to BellSouth to frustrate the implementation of those requirements, however, will increase significantly.

(c) N/A

(d) The merger does not change the Commission's legal authority.

(e) N/A

DATA REQUEST NO. 7: On Page 12 of NuVox's Responses to Joint Applicants' Initial Data Requests, you contend that the merger will have a "significant impact" on NuVox who relies "in whole or in part on the network owned and controlled by the Joint Applicants." Identify by location end points each and every facility you currently purchase from AT&T in Kentucky which you believe will be impacted as a result of the merger.

RESPONSE: Nuvox objects to Joint Applicants' Data Request No. 7 because it seeks the production of confidential business information that is not provided in the normal course of business to the public or to competitors. Subject to and without waving the foregoing objection, such information will be produced to Joint Applicants pursuant to the Protective Agreement entered between the parties.

DATA REQUEST NO. 8: On page 16 of NuVox's Responses, you contend that the combined entity "will have nearly unlimited resources to bring to bear to thwart Respondent's efforts to provide competitive telecommunications services in Kentucky." Do you agree that the Commission's authority to resolve complaints against BellSouth, as a wholly-owned subsidiary of AT&T, will remain the same post-merger as it is today?

RESPONSE: Respondent agrees that the Commission's authority to resolve complaints against BellSouth, as a wholly-owned subsidiary of AT&T, will remain the same post-merger as it is today.

DATA REQUEST NO. 10: If your response to Request 9 is anything other than an unqualified yes, state each and every fact or theory that supports your response.

RESPONSE: Joint Applicants did not submit a Data Request No. 9 and, therefore, no response is possible. Assuming that Joint Applicants' Data Request No. 10 was intended to refer to Data Request No. 8 above, Respondent hereby adopts its response thereto.

DATA REQUEST NO. 11: On page 17 of NuVox's Responses, you contend that "even the performance plan in place since BellSouth received Section 271 authority will be wholly inadequate to deter deliberately poor performance in provisioning UNEs." Do you agree that the Commission's authority over the performance plan will remain the same post-merger as it is today?

RESPONSE: Respondent agrees that the Commission's authority over the performance plan will remain the same post-merger as it is today.

DATA REQUEST NO. 12: If your response to Request 11 is anything other than an unqualified yes, state with specificity each and every fact or theory that supports your response.

RESPONSE: *See Respondent's Response to Data Request No. 11 above.*

DATA REQUEST NO. 13: Does NuVox compete in the mass market (i.e., for residential customers)?

RESPONSE: NuVox defines the mass market to include residential and business customers served via analog phone lines. NuVox does not currently compete for residential customers in Kentucky, but does provide service to some analog business customers.

DATA REQUEST NO. 14: Does NuVox have any enterprise customers in Kentucky that generate over 1 million per year in revenue for NuVox?

RESPONSE: No.

DATA REQUEST NO. 15: In which market do you contend you currently compete with AT&T in Kentucky?

RESPONSE: NuVox provides service throughout Kentucky in competition with telecommunications providers that offer service to small business customers.

Submitted to and filed with the Kentucky Public Service Commission this 23rd day of May, 2006.

Respectfully submitted,

/s/ Henry S. Alford

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CERTIFICATE OF SERVICE

Counsel for Respondent NuVox Communications, Inc. hereby certifies that a true and accurate electronic copy of this filing was transferred to the Commission via the Electronic Filing Center this 23rd day of May, 2006 and filed in hardcopy document form with the Commission also on the 23rd day of May, 2006. Further, consistent with the Commission's Order of April 12, 2006, notice of the filing of this Motion was served via electronic mail on all parties of record. Parties of record can access the information at the Commission's Electronic Filing Center located at <http://psc.ky.gov.efs/efsmain.aspx>.

/s/ Henry S. Alford

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